

CIVIL SERVICE COMMISSION MINUTES

July 18, 2001

A Regular Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Gordon Austin
Barry I. Newman
Sigrid Pate

Absent was:

Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
July 18, 2001

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u> <u>2,3,4,5,6,8,9</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
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COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Austin. Carried.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of June 20, 2001.

Approved.

DISCIPLINES

2. Commissioner Dixon: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Eilene Marks**, Licensed Vocational Nurse, Health and Human Services Agency (HHSA), appealing an Order of Suspension and Charges by the HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - discourteous treatment of public or other employees; Cause II - failure of good behavior. Employee has worked as a licensed vocational nurse (LVN) for the Agency for approximately 11 years. She worked in the Agency's Emergency Psychiatric Unit (hereinafter "EPU") at the County Psychiatric Hospital. Employee has a record of discipline dating back to 1996 regarding discourteous communication with other members of the hospital staff. Specifically, there are three prior incidents resulting in a Letter of Reprimand, a Written Warning, and a Counseling Memo.

The incident at issue involved a verbal exchange between Employee and Douglas Conte, M.D., at the Nurse's station in the EPU. Employee commented to Dr. Conte that the medication he prescribed for a patient that day was inadequate. Dr. Conte was offended by Employee's comments and in effect told her that he did not require her advice. There was testimony that it was the practice in the EPU to encourage open communication between nurses and psychiatrists regarding medication and other patient matters. The main issue of Employee's appeal pertains to whether the tone or manner of her communication to Dr. Conte was

discourteous or inappropriate. Employee introduced the only independent "eye-witness" testimony at the Commission hearing regarding the incident. This witness testified that he believed that Employee's comments were not inappropriate or confrontational and that Dr. Conte overreacted. The Agency conceded that it could have brought a witness, but chose not to. (As an afterthought, the Agency sought to introduce this witness's written statement after the Agency rested its case, however, the written statement was not accepted into evidence.)

Also influential was the testimony of Dr. Bowlous who worked in the EPU with Employee on a daily basis. He testified that he frequently spoke with Employee about patient medication and never found her comments to be inappropriate or discourteous. In contrast to Dr. Bowlous, Dr. Conte worked only one day per month in the EPU. The evidence and testimony corroborated Employee's version. It is therefore recommended that the Order of Suspension be reversed; that employee be awarded back pay, benefits and interest for any suspension already served relating to the Order of Suspension, minus any wages she received from outside employment; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Newman. Carried.

3. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Federico Gallardo**, former Pharmacy Technician, HHSA, appealing an Order of Removal and Charges by the HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Negligence resulting in harm or significant risk of harm to the public or the public service (incorrectly filling prescriptions); Cause II - Inefficiency; Cause III Conduct unbecoming an officer or employee of the County; Cause IV - Failure of good behavior; and Cause V - Acts incompatible with or inimical to the public service. Employee has been employed in the Agency's Rosecrans Street Pharmacy for approximately 11 years. During the last 6 years he has been in the classification of Pharmacy Technician. There has been one prior discipline, which after appeal to the Commission, consisted of a letter of reprimand in which Employee was found to be guilty of negligence in filling and dispensing prescriptions.

The Agency introduced testimony of the Chief Pharmacist who stated that in early December 2000, Employee entered the wrong name on a prescription label. Further incidences of errors in filling and labeling occurred from January 2001 to March 2001. The Agency proved several errors on the part of Employee and it was shown that Employee had a higher error rate than other pharmacy technicians. However, it was unclear whether these facts were based on objective data or subjective impressions and hearsay. Employee's errors were mitigated by several factors. Evidence indicated that these same errors were common within the pharmacy, and contradicted by the Agency's own performance appraisal reports through June 2000.

There is no detailed written policy regarding the procedures at issue. To the extent there is a written policy, the pharmacy technicians are not made aware of it. On at least five of the causes at issue, Employee was only partially responsible for errors made by several co-employees. On two causes, the Agency failed to produce any evidence whatsoever. In

any case, Employee should have been particularly vigilant having been placed on notice by his prior discipline. Accordingly, it is recommended that the Order of Removal be modified to a ninety (90) calendar day suspension without pay; that Employee be awarded back pay, benefits and interest from the date of his removal to the date of this decision, minus the 90 calendar day suspension; that in light of the previous recommendation, an even stronger recommendation be given to the Agency to carefully review its policies and procedures at the pharmacy, to make any improvements as deemed necessary, and to clearly communicate improved policies and procedures to employees; that Employee be admonished that any further transgressions similar to those contained in these charges may result in termination; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

4. Commissioner Newman: Richard Pinckard, Esq., on behalf of **Adam Krachman**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Failure to Meet Standards, Abuse of Process/Withholding Evidence (withholding information concerning a criminal investigation); Cause II - Acts which are incompatible with and/or inimical to the public service. Employee has been a Corrections Deputy Sheriff for almost 8 years. No record of prior discipline was introduced at the hearing. At the time of the incident, Employee was with another deputy when the deputy drove a Sheriff's bus over the work boots belonging to a coworker, which constituted a criminal act. Employee withheld information concerning this act and the identity of the other deputy during the course of an investigation. The owner of the damaged boots filed a crime incident report and a sergeant within the Transportation Detail posted a memo on the unit's briefing board requesting that anyone with information regarding the boots contact the Department. Although Employee was aware of this memo, he did not report the incident. Another deputy who was confided in reported the relevant information to the Department. The Internal Affairs Division was assigned to investigate the entire incident.

At the Commission hearing there was conflicting testimony regarding Employee's level of participation in the vandalism to the boots, his knowledge of the incident and his ability to prevent or intervene in the vandalism. However, it is undisputed that Employee had direct knowledge of all relevant details of the incident and never voluntarily provided information to the Department. Employee made various arguments in mitigation of his admitted breach of duty. He stated that he deferred to the deputy's judgment because he viewed the deputy as a superior due to his status as a training officer, frequently acting as a Sergeant, and a more senior member of the Department.

The Department stressed the importance of integrity in its deputies and offered testimony as to how this incident was a form of the infamous "code of silence", and explained that it takes a strong stand wherever such code of silence is exhibited. Additionally, the Department noted the insubordinate nature of Employee's conduct. The Department's selected discipline is well within its reasonable discretion. It is therefore recommended that the Order of Pay Step Reduction be affirmed; that the Commission read and file this report; and that the proposed

decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

Complaints

5. **Carlos Bejar**, Environmental Health Specialist III, Department of Environmental Health (DEH), alleging national origin discrimination by the DEH. (See also Nos. 8 & 9.)

RECOMMENDATION: Deny Request.

The President of the Commission explained that this item is linked with items 8 and 9 below. The Commission addressed all three items herein:

Rule VI is recommended for denial because information regarding alleged discriminatory act(s) was provided to the Commission beyond the 60-day time requirement.

Item No. 8, request for a Rule XI investigation, is recommended for denial because the issues being raised by Mr. Bejar do not fall within the investigative powers of the Commission.

Item No. 9, request for a Rule XII classification review, is recommended for denial because Commission review at this time is premature.

There was discussion regarding Item No. 8 as to why the Commission was not the appropriate body to contact regarding Mr. Bejar's request for investigation. Larry Cook, Executive Officer explained that under Charter Sections 907 and 907.1 the Commission may investigate and remedy matters that relate to personnel matters. The allegations set forth by Mr. Bejar do not relate to personnel issues. The Commission advised Mr. Bejar that there are other more appropriate investigative bodies he may wish to consider.

Motion by Newman to accept staff recommendation for items 5, 8 (below) and 9 (below); seconded by Pate. Carried.

SELECTION PROCESS

Complaints

6. S.E.I.U. Local 535, on behalf of **Karen E. Pittman**, Eligibility Technician, Health and Human Services Agency (HHSA), appealing the Department of Human Resources' decision to not place her on the employment list for the classification of Public Assistance Investigative Trainee due to her failure of the pre-employment psychological evaluation. (Continued from the June 6th and 20th, 2001 Commission meetings.)

RECOMMENDATION: Deny Request.

Brenda Sammons, S.E.I.U. Local 535, addressed the Commission on behalf of Karen Pittman. Ms. Sammons explained that Ms. Pittman was objecting to the decision not to place her on the employment list because the 3rd psychologist failed to provide an independent psychological evaluation, and instead relied on the report of the 1st psychologist. Charles Nares, Human Resources Manager, DHR, explained that an issue had arisen in the

first interview process and the third psychologist reviewed the test materials and interviews pertaining to that issue.

Ms. Sammons also explained that the appeal was untimely due to the fact that Ms. Pittman was unaware of the appeal process. Ms. Sammons made several phone calls to several Departments, trying to ascertain the proper procedures for appealing the decision. She finally spoke with staff at the Commission office who explained the appeal process. The appeal time had lapsed by that time. The Commission voted to deny a hearing in this matter, however, not on the basis of the timeliness issue.

**Motion by Pate to accept staff recommendation; seconded by Newman.
Carried.**

Findings

7. **Francisco Brambila**, appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff.

RECOMMENDATION: Ratify item No. 7. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 7 ratified.

INVESTIGATIONS

Complaints

8. **Carlos Bejar**, Environmental Health Specialist III, DEH, requesting an investigation into various operations of the DEH. (See also Nos. 5 & 9.)

RECOMMENDATION: Deny Request.

Staff recommendation approved. See Item No. 5 above.

CLASSIFICATION

Complaints

9. **Carlos Bejar**, Environmental Health Specialist III, DEH, requesting a classification review of his duties in the DEH. (See also Nos. 5 & 8.)

Recommendation: Deny Request.

Staff recommendation approved. See Item No. 5 above.

OTHER MATTERS

Seal Performance Appraisal

10. **Carol Sabo**, Alcohol & Drug Program Specialist I, HHSA, requesting the sealing of a performance appraisal for the period October 20, 2000 to April 20, 2001.

RECOMMENDATION: (1) Grant Request; (2) Recommend to the Agency that it communicate with Ms. Sabo verbally and in writing goals for the current rating period similar to those contained in the performance appraisal requested to be sealed.

Staff recommendation approved.

Extension of Temporary Appointments

11. Health and Human Services Agency
 - A. 1 Residential Care Worker Trainee (Veronica Sherman)
 - B. 8 Protective Services Worker I's (Lalani Beech, Jennifer Castello, Marisa Salehyan, Aileen Smith, Jillian Hay, Nidia Romero, Jessica Greiner, Tonya Sullivan)
 - C. 1 Protective Services Worker II (Kelly-Anne Savage)
 - D. 1 Senior Accountant (Jeanette Ladrido)
 - E. 1 Geriatrics Therapy Specialist (Barbara Brown)
12. Auditor and Controller
 - 2 Cashiers (Marie Bess Santos, Helen Jumalon)
13. Department of Parks and Recreation
 - 1 Assistant Park Project Manager (Patricia Tan)

RECOMMENDATION: Ratify Item Nos. 11-13.

Item Nos. 11-13 ratified.

14. Public Input.

ADJOURNMENT: 3:30 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE SEPTEMBER 5, 2001.